

Expedited Bill No. 35-04
Concerning: Personnel – Retirement –
Deferred Compensation, Board
of Investment Trustees
Revised: 12-7-04 Draft No. 4
Introduced: October 19, 2004
Enacted: December 7, 2004
Executive: _____
Effective: _____
Sunset Date: None
Ch. , Laws of Mont. Co.

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EXPEDITED ACT to:

- (1) allow the County to sponsor additional deferred compensation plans under collective bargaining agreements with employee representatives;
- (2) revise the membership of the Board of Investment Trustees by adding certain public members and representatives of certain employee organizations; and
- (3) generally amend the law concerning deferred compensation plans and the composition of the Board of Investment Trustees.

By adding

Montgomery County Code
Chapter 33, Personnel and Human Resources
Article IX. Deferred Compensation.
Section 33-146B, Collectively Bargained Plans.

By amending

Chapter 33, Personnel and Human Resources
Section 33-59, Board of Investment Trustees.
Section 33-141, Definitions.

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<u>[Single boldface brackets]</u>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<u>[[Double boldface brackets]]</u>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 33-59 and 33-141 are amended and Section 33-146B is added as follows:

33-59. Board of investment trustees.

* * *

(b) *Membership.*

(1) The **Board** has [9] 13 trustees.

* * *

(3) The following [5] 9 trustees must be appointed by the Executive and confirmed by the Council:

(A) [An] Three active County **employees**, [in] each of whom is a member of a different collective bargaining unit, and who [is a] are vested **members** of the **retirement system**, or [an] individuals recommended by [an] each employee organization certified under Articles V, VII, or X. **Each employee organization** may recommend 3 to 5 individuals for [this] the respective trustee position.

Before appointing [this] these trustees, the Executive must consider, and should select from, the individuals recommended by the **employee organizations**. The Executive must not appoint more than one person from each employee organization. The Executive must notify the Council when appointing an individual not recommended by an **employee organization**. A 3-year term for [this] these trustees ends on March 1[[],] [2001, and] of every third year [thereafter] after each trustee is confirmed by the Council [confirms the respective

27 appointment]]. Any trustee appointed under this
28 subparagraph must not vote on any matter involving the
29 County deferred compensation plan.

30 [[* * *]]

- 31 (B) An active County employee who is a vested member of the
32 retirement system and the Merit System, and not a member
33 of a collective bargaining unit. A 3-year term for this
34 trustee ends on March 1[[, 1999, and]] of every third year
35 [[thereafter]] after the trustee is confirmed by the Council.
- 36 (C) A retired County employee who is a member of the
37 retirement system. Before appointing this trustee, the
38 Executive must consider, and should select from, a list of 3
39 to 5 individuals recommended by the Montgomery County
40 Retired Employees' Association. The Executive must
41 notify the Council when nominating an individual not
42 recommended by the Association. A 3-year term for this
43 trustee ends on March 1[[, 2000, and]] of every third year
44 [[thereafter]] after the trustee is confirmed by the Council.
- 45 (D) [[A representative]] Two representatives of the Council
46 who are knowledgeable in pensions, investments, or
47 financial matters. Before appointing [[this trustee]] each of
48 these trustees, the Executive must consider, and should
49 select from, a list of 3 to 5 individuals recommended by
50 the Council. A 3-year term for [[this trustee]] these
51 trustees ends on March 1[[, 2000, and]] of every third year
52 [[thereafter]] after each trustee is confirmed by the
53 Council.

(E) [An] [[Three]] Two individuals knowledgeable in pensions, investments, or financial matters. [[The Executive must not appoint a person who furnishes, or is employed by a firm that furnishes, to pension funds and other institutional investors the kind of investment services purchased by the Board.]] Before nominating [this] these trustees, the Executive must consider, and should select from, individuals recommended by citizens or countywide citizens' groups. An individual recommended by a citizens' group need not be a member of the group. The Executive must notify the Council when nominating an individual not recommended by a citizens' group. A 3-year term for [this] these trustees ends on March 1[[],] [1999, and] of every third year [thereafter] after each trustee[[s appointment]] is confirmed by the Council.

* * *

(5) The Executive must not appoint as a trustee any person who furnishes, or is employed by a firm that furnishes, to pension funds and other institutional investors the kind of investment services purchased by the Board.

74 33-141. Definitions

* * *

(b) Collectively Bargained Plan means a plan established under Section 33-146B.

[(b)](c) * * *

[(c)](d) * * *

[(d)] (e) * * *

[**(e)**] (**f**) * * *

* * *

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33-146B. Collectively Bargained Plans.

84 The County may [[sponsor]] establish and maintain one or more additional
85 deferred compensation plans for employees covered by a collective bargaining
86 agreement. In the case of any collectively bargained plan:

- (a) The [[employee]] certified representative must assume the duties and responsibilities of the **Board**, except for the requirements of Section 33-61(a), and the [[employee]] certified representative must assume the duties and responsibilities of the Chief Administrative Officer and the County under this Article.
 - (b) The **Board**, Chief Administrative Officer, and County have no fiduciary or other responsibility for a **collectively bargained plan** except as required by federal law, including any regulation, ruling, or other guidance issued under that law.
 - (c) The [[employee]] certified representative must indemnify the County and provide fiduciary liability insurance protecting itself and the County in an amount agreed to by the County and [[employee]] certified representative through collective bargaining.
 - (d) The officers of the [[employee]] certified representative who have direct responsibility for plan administration, and the trustees of any trust established under this Section, must:
 - (1) provide financial disclosure to the participants of the plan in a form and manner [[similar to]] at least as stringent as that required of the **Board**; and
 - (2) establish and conform to a code of ethical conduct, approved by participants in the plan, [[similar to]] at least as stringent as that

- 108 required of the Board.
- 109 (e) The collectively bargained plan, and its separate trust, custodial
110 account or annuity contract, must meet, in form and operation, all
111 applicable requirements of the Internal Revenue Code and any
112 regulation, ruling, or other guidance issued under that law.
- 113 [(f) The plan must allow each participant annually, during a certain time
114 period, to transfer assets from this plan to any other plan for which the
115 participant is eligible, or from that plan to this plan.]]
- 116 [(g) Within two months after any plan begins operations under this Section,
117 and by January 15 of each year thereafter, the plan trustees must
118 transmit to the Chief Administrative Officer and Council a report that
119 documents and certifies that the trustees, as fiduciaries of the plan:
- 120 (1) are in compliance with the prudence and duty of loyalty standard
121 of care codified in Section 33-61C, the prohibited transaction
122 provisions in Section 33-60(e), and the self-dealing prohibitions
123 in Section 33-61D;
- 124 (2) have met their obligations to obtain fiduciary liability insurance,
125 retain a trustee acceptable to the County, and retain an
126 independent investment consultant; and
- 127 (3) have retained an independent auditor that has provided (or, in the
128 case of the first report, will provide) an annual report to the
129 Council, as the Board does for the County Plan, and have fully
130 addressed all issues raised in each audit report;
- 131 (4) have retained all providers and contractors for the plan (for any
132 transaction greater than \$25,000) through an open competitive
133 bidding process; and

134 (5) included in the audit report a list of any rebates, and any direct or
135 indirect compensation, received by the plan or any trustee or
136 fiduciary.]]

137 [(h) The Chief Administrative Officer must report by January 15 of each
138 year to the Council:

139 (1) specific data on fund options and fees in any collectively
140 bargained plan and how they compare to the County Plan; and
141 (2) on coordination between the County Plan and any collectively
142 bargained plan on contribution limits, tax information, and
143 provisions such as normal retirement age, catch-up rules, and
144 excess deferrals, that are essential to avoid violations of the
145 Internal Revenue Code.]]

146 (f) Any trustee or fiduciary of a collectively bargained plan must not
147 accept any direct or indirect compensation from any person who does
148 business with that plan.

149 **Sec. 2. Expedited Effective Date.**

150 The Council declares that this legislation is necessary for the immediate
151 protection of the public interest. This act takes effect on the date when it becomes
152 law.

153 *Approved:*

154
155
Thomas A. Perez, President, County Council

Date

156 *Approved:*

157
158
Douglas M. Duncan, County Executive

Date

159 *This is a correct copy of Council action.*

160

161

Mary A. Edgar, CMC, Clerk of the Council

Date